

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:) Examiner: Sandra L. WEGERT
Audrey GODDARD et al) Art Unit: 1647
Patent No. 7,491,529) Attorney's Docket No. GNE-2730-P1C64
Issued: February 17, 2009) Customer No. 35489
For: SECRETED AND TRANSMEMBRANE)
POLYPEPTIDES AND NUCLEIC ACIDS)
ENCODING THE SAME)

FILED VIA EFS
ON APRIL 17, 2009

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. § 1.705(b)

MAIL STOP: OFFICE OF PETITIONS

Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

The Determination of Patent Term Adjustment under 35 U.S.C. 154(b) ("Determination") on the Issue Notification for United States ("U.S.") Patent No. 7,491,529, states that the Patent Term Adjustment ("PTA") is 498 days. Applicants hereby notify the United States Patent and Trademark Office ("USPTO") that the PTA cited under the Determination is believed to be in error, and request that the PTA accorded to the above-referenced patent be 599 days.

REMARKS

Patent Term Adjustment

The total PTA was noted as 498 days under the *Determination* on the Issue Notification for U.S. Patent No. 7,491,529.

Under the opinion entered on September 30, 2008 in *Wyeth vs. Dudas* (Civil Action No. 07-1492) ("*Wyeth*"), the U.S. District Court granted summary judgment to *Wyeth* concluding that the periods of time accorded under 35 U.S.C. 154(b)(1)(A) and under 35 U.S.C. 154(b)(1)(B) only "overlap" if they occur on the same

In reviewing the PTA History for Patent No. 7,491,529 as published in the PAIR system of the USPTO, Applicants note that the 3-Year Date, which begins the time period under 35 U.S.C. 154(b)(1)(B), is November 19, 2004. Applicants further note that the time period under 35 U.S.C. 154(b)(1)(B) ends with the filing of a Request for Continued Examination on February 28, 2005. Applicants conclude that there is no "overlap" of time accumulated under 35 U.S.C. 154(b)(1)(A) and 35 U.S.C. 154(b)(1)(B) since there is no USPTO delay under 35 U.S.C. 154(b)(1)(A) during the 3-Year Date period beginning on November 19, 2004 and ending on February 28, 2005. Applicants conclude that there are 101 days of additional PTA in accordance with *Wyeth*.

Thus, in accordance with the summary judgment under *Wyeth*, Applicants should be accorded 101 days (11/19/2004 to 02/28/2005) of additional USPTO Three Year Delay.

The Total USPTO Delay should be corrected to 874 days.

The Total Applicants' Delay equals 275 days

Thus, the Total PTA is 599 days in favor of Applicants.

The Applicants request that the USPTO recalculate the PTA in view of the above remarks, and accord Applicants 599 days of PTA.

CONCLUSION

Applicants request that the PTA for U.S. Patent No. 7,491,529 be corrected to 599 instead of the 498 days indicated on the *Determination*.

Applicants hereby authorize payment from Deposit Account No. 50-4634 (referencing Attorney's Docket No. GNE-2730-P1C64 for the PTA adjustment request as set forth in 37 C.F.R. § 1.18(e). However, Applicants do not believe the \$200.00 charge for reconsideration of the PTA should be charged to the Applicants, as Applicants believe that no error was made on the part of the Applicants. Please deposit any refund, or, if applicable, charge any additional fees that may be due in connection with this application, to the afore-mentioned Deposit Account. Should there be any questions, please contact the undersigned at the correspondence address listed below.

Respectfully submitted,

Date: April 17, 2009

By: 
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